

Message

From: Covington, Jeryl [Covington.Jeryl@epa.gov]
Sent: 12/29/2017 1:07:40 PM
To: Martinez, Brittany [Martinez.Brittany@epa.gov]
Subject: FW: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

FYI

From: Reyes, Deldi
Sent: Thursday, December 28, 2017 7:55 PM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

Jeryl, I'm not sure what might be triggered by the text you reviewed, but here is what I found. In short, I think this language stems from long standing definitions of what is ag commodity, rather than comment on the proposal that led to the language in the powerpoint, which, somewhat confusingly, I cannot find in the final rule language. From interpreting DPR's responses to comments that only glancingly relate, other examples of pesticide uses that are not intended to be captured by the reg are 1) spraying of rights-of-way and 2) post-harvest pesticide applications which are considered an industrial use.

Finally, I scanned the [workshop proceedings](#) and found them very interesting, but not directly relevant to your question.

First, the term ag commodity has been defined in CA state DPR regs for quite a while. In the rule package's [initial statement of reason](#), we find this text:

Section 6690 applies to pesticide applications made for the production of an "agricultural commodity." As defined in 3 CCR [section 6000](#), agricultural commodity means an unprocessed product of farms, ranches, nurseries, and forests (except livestock, poultry, and fish). Agricultural commodities include fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; rangeland and pasture; seed crops; fiber crops such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Often, applications for the production of an agricultural commodity will be made to large areas; involve pesticides that have been designated as a restricted material; and are made with equipment (such as airblast sprayers or aircraft) that have a higher potential for drift.

I then reviewed 97 pages of the ["45-day comments"](#) on DPR's proposed buffer reg. I found only two references to Section 6690, excerpted below and yellow highlight added. I also did a search in the 15-day comments for "Section 6690" (did not review them all) and found another reference. See below. (Note, the number at the end of each comment is a code that identifies the commenter but I have not been able to find a key on the [main webpage for this rule](#).)

From 45 day comments:

Excerpt:

Comment 22F: Review of the ISR and our interpretation of the intent of the restrictions imposed by the proposed rule are to pesticide applications prior to and during growing of an agricultural commodity and not for post-harvest purposes. The rule should be clear that the proposed rules provisions do not pertain to post-harvest applications.

DPR Response: Section 6690 says "The provisions of this article pertain to pesticide applications made for the production of an agricultural commodity within ¼ mile of a schoolsite." Post-harvest pesticide applications are considered an industrial use and are not included in the regulation. 124

Comment 24F: Would the term “fumigants” exclude aluminum phosphide and zinc phosphide? If so, please state the exemption in regulation. Underground phosphine spot treatments for rodents are permitted on school grounds. In addition, phosphine products are restricted and require a permit from the CAC. Product label and permit condition further restrict the distance phosphine products can be used from a structure.]

DPR Response: Aluminum phosphide and zinc phosphide applications made for the production of an agricultural commodity are included in the regulation. Other uses of these pesticides are not included in the regulation, including industrial uses (e.g., post-harvest applications) and non-production agriculture uses (e.g., rights-of-way applications). 43

From 15day comments:

31

DPR fails to address commodity fumigation and the proposed exemption must be addressed.
This comment is outside the scope of the modifications. However, section 6690 states that “The provisions of this article pertain to pesticide applications made for the production of an agricultural commodity...” As defined in section 6000, agricultural commodity “means an unprocessed product of farms, ranches, nurseries, and forests...” Commodity fumigations are not included in the regulation because they are not pesticide applications for unprocessed products of farms, ranches, nurseries, or forests.

12

From: Covington, Jeryl

Sent: Thursday, December 28, 2017 1:59 PM

To: Reyes, Deldi <Reyes.Deldi@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

Thanks!

From: Reyes, Deldi

Sent: Thursday, December 28, 2017 4:58 PM

To: Covington, Jeryl <Covington.Jeryl@epa.gov>

Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

Ah, got it. Let me look into that a bit.

From: Covington, Jeryl

Sent: Thursday, December 28, 2017 1:55 PM

To: Reyes, Deldi <Reyes.Deldi@epa.gov>

Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

From the PP you previously submitted, there is a reference to Section 6690 – scope and definitions that outlines the exclusions for non-production agriculture applications and non-agricultural applications.

I am interested in what public comments were received that resulted in these exclusions, their bases, and which entity(ies) submitted these comments.

From: Reyes, Deldi

Sent: Thursday, December 28, 2017 4:49 PM

To: Covington, Jeryl <Covington.Jeryl@epa.gov>

Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

No, I don't. We should ask Amy when she's back.

If you can point me to what you're specifically looking at, I can try to research.

From: Covington, Jeryl

Sent: Thursday, December 28, 2017 1:45 PM

To: Reyes, Deldi <Reyes.Deldi@epa.gov>

Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

Yes.

Do you know why these sites were excluded, any background information on the public comments/records for this proposition? The HI properties fall into this category.

From: Reyes, Deldi

Sent: Thursday, December 28, 2017 4:43 PM

To: Covington, Jeryl <Covington.Jeryl@epa.gov>

Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

OR – non production agriculture can also mean an exemption for research purposes. So, if company is testing out different crop strains against various pesticide applications, they could argue that research is not for the purpose of generating seed or crops for the market and thus, excluded.

hmmm

From: Reyes, Deldi

Sent: Thursday, December 28, 2017 1:39 PM

To: Covington, Jeryl <Covington.Jeryl@epa.gov>

Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

Hi, there – so I have NOT reviewed the buffer info but just from the context, I'd say that it would be a hugely radical proposition to include activities such as fumigating an individual residence or school or applications to ag that are not for commercial production. I mean, would that implicate community gardens, hobby gardens of individual land owners, commercial nurseries, etc?

As you can see from the CA DPR reg, it is exclusive to pesticide applications "made to produce an agricultural commodity".

From: Covington, Jeryl

Sent: Thursday, December 28, 2017 1:31 PM

To: Reyes, Deldi <Reyes.Deldi@epa.gov>

Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

I reviewed the previously submitted buffer information. I have one questions, do you know why the following exemptions were included in the proposition?

Excludes non-production agriculture applications

Excludes non-agricultural applications

Both of these exclusions would seem applicable to some of the lands in which the Earthjustice complaint is filed.

From: Reyes, Deldi

Sent: Thursday, December 28, 2017 4:25 PM

To: Garnett, Desean <Garnett.Desean@epa.gov>; Martinez, Brittany <Martinez.Brittany@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; TenBrook, Patti <TenBrook.Patti@epa.gov>; Grisier, Mary <Grisier.Mary@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>

Cc: Rhines, Dale <rhines.dale@epa.gov>

Subject: RE: CA DPR's new school regulations (and an added perspective from members of UC Berkeley's CHAMACOS study team)

Ex. 5 Deliberative Process (DP)

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Hope you all have a great New Year's Eve and Day!

Deldi

From: Reyes, Deldi

Sent: Friday, December 22, 2017 1:17 PM

To: Garnett, Desean <Garnett.Desean@epa.gov>; Martinez, Brittany <Martinez.Brittany@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>

Cc: Rhines, Dale <rhines.dale@epa.gov>

Subject: CA DPR's new school regulations

Ex. 5 Deliberative Process (DP)